IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13588 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BRIJESH DINESHBHAI PARMAR - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS NISHA M THAKORE for Petitioner(s) : 1,
Mr AA Dave, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1& 3,
RULE SERVED for Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/12/2007

ORAL JUDGMENT

1. Invoking Article 226 of the Constitution of India, the petitioner has sought a writ of *habeas corpus* or any other appropriate directions to quash

and set aside the order dated 15.1.2007 of his detention as a dangerous person under the provisions of section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985. (for short, “the PASA Act”) with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order.

2. According to the grounds of detention supplied to the detenu under section 9 of the PASA, he is “dangerous person” having criminal mind. He is stated to be indulging in the activity of committing theft in different areas in Gujarat by committing theft of vehicles and thereby instilling a sense of fear in the public. Three FIRs are stated to have been registered in Naranpura police station and one FIR is stated to have been registered in Sola police station alleging offences punishable under sections 379, 356 and 114 of Indian Penal Code. Thus, after being satisfied about the petitioner's status of being “dangerous person” and with a view to prevent him from his anti-social activities, it was found to be necessary to prevent him from acting in a manner

prejudicial to maintenance of public order, the impugned order has been passed.

3. Learned advocate Ms. Nisha Thakore, appearing for the detenu, challenged the impugned order on different grounds namely, that pursuant to the impugned order dated 15.10.2007, the petitioner has been taken in custody and sent to Junagadh district jail and copy of the ground of detention was not supplied to the petitioner and hence the petitioner was deprived of his constitutional rights to make effective representation before the concerned authority. She further submitted that through the relative of the petitioner, the detenu has come to know about the confirmation of the detention. She submitted that the detaining authority has wrongly registered four offences under section 356 and 379 of IPC and recorded statements of the witnesses. She further submitted that the Advisory Board has erred in confirming the detention order without giving opportunity of hearing to the petitioner. It is also submitted by her that the names and address of two witnesses have not been disclosed to the petitioner.

She finally submitted that non-supply of materials and denial of his right to make effective representation and the delay of one and half months caused in passing the detention order, the subjective satisfaction of the detaining authority gets vitiated.

4. The detaining authority has denied all the allegations. By filing affidavit-in-reply, the Commissioner of Police, Ahmedabad, has stated that the detenu is a head-strong and dangerous person and his criminal activities are directly or indirectly causing or likely to cause harm, danger and alarm of insecurity among the general public. He justified that he has passed the order of detention with full application of mind and in compliance of and in consonance with the provisions of PASA Act. It is also stated in the affidavit-in-reply that all the documents which have been referred to and relied upon by him for passing the impugned order of detention have been supplied to him along with the grounds of detention.

5. I have heard the learned advocate for the petitioner-detenu and the learned AGP for the respondents and I have also perused the rrelevant records. It transpires from the record that the detenu has purchased one Hero Honda motor cycle from one of his friends which was stolen by him. Thereupon the present petitioner was arrested with reference to section 41 (B) of the Bombay Police Act and thereafter other cases of theft were registered by the police. From the police papers, it also transpires that in the other three cases of theft, the muddamal vehicles were found as unclaimed. Even thereafter the offences were registered against the petitioner. Except the cases of theft, no other case is registered against the petitioner-detenu. Taking into consideration the peculiar facts and circumstances, the offences and the manner in which it was committed and the detenu was detained, the impugned order passed by the detaining authority is required to be quashed and set aside as continuous detention under the impugned order cannot be sustained.

6. In the result, this Special Civil Application is allowed. The impugned order of detention dated 15.1.2007 passed by the Commissioner of Police, Ahmedabad City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp